

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

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WAKE COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 04-CVS-014949

JOSÉ MANUEL GARCIA-ÁLVAREZ, VICTOR  
VARGAS-MENDOZA, FELIPE DE JESUS DE  
LUNA-GUERRERO, BALDOMERO  
GUTIERREZ-DE LUNA, and LUIS MANUEL  
DE LUNA-REYES, on behalf of themselves  
and all other similarly situated  
persons,

Plaintiffs,

v.

THE NORTH CAROLINA GROWER'S  
ASSOCIATION, INC., DURWOOD COOK,  
JAMES POPE, JR., and MARCUS THIGPEN,  
on behalf of themselves and all other  
similarly situated members of The  
North Carolina Grower's Association,  
Inc.,

Defendants.

JUDGMENT AND ORDER  
(OTHR)

THIS MATTER comes before the Court on the parties' Joint Motion for Final Approval of Class Action Settlement ("Joint Motion") pursuant to Rule 23(c) of the North Carolina Rules of Civil Procedure. The Court held hearings on the parties' Joint Motion on January 24, 2006 and February 17, 2006 in Durham, North Carolina. Counsel for the named Plaintiffs and Plaintiff Classes and counsel for the Defendants and Defendant Classes that were certified by the Court's Order filed on January 27, 2005 were present at the hearings. In addition, counsel for other individual members of the two Defendant Classes and other individual members of the two Plaintiff Classes were present.

Having reviewed the Settlement Agreement between the parties; having considered the parties' Joint Motion; the memoranda of the moving parties together with

all supporting affidavits attached thereto; the memoranda and papers of the four (4) grower members of the Defendant Classes who have objected to some terms of the original Settlement Agreement and Supplement and the amended Settlement Agreement together with any supporting affidavits; the memoranda of the two (2) workers represented by the National Right to Work Foundation, Inc. who also have objected to some terms of the original Settlement Agreement and Supplement together with any supporting materials; the brief of *Amicus Curiae* North Carolina Farm Bureau Federation, Inc.; the facsimile comments of approximately 27 members of the Plaintiff Classes; and the affidavits filed by any other members of both the Plaintiff and Defendant Classes; and having heard argument from counsel for the parties and those persons who have objected to some terms of the original Settlement Agreement and Supplement and the amended Settlement Agreement; and having heard and received, to the extent necessary, any additional testimony from all interested persons and entities, the Court finds that:

A. The following classes of Plaintiffs that are the subject of the proposed Settlement Agreement between the parties are:

1. Plaintiff Class #1: A class of persons under Rule 23(a), N.C. R. Civ. P., for declaratory relief, back wages, and liquidated damages under N.C. Gen. Stat. §§ 95-25.6, 95-25.22, and 95-25.22(a1) which consists of all alien or formerly alien workers who were, are, and/or shall be jointly or severally employed by defendants The North Carolina Grower's Association ("NCGA"), NCGA member Marcus Thigpen, NCGA member Durwood Cook, NCGA member James "Jimmy" Pope, Jr., and/or one or more other members of the NCGA at any time in the time period from December 23, 2000 and continuing thereafter through the date on which final judgment is entered in this action who performed and/or shall perform any work for defendants NCGA, Thigpen, Cook, Pope, and/or any member of the defendant class defined in ¶ 23 of the Complaint in the first workweek after that worker arrived and/or shall arrive in North Carolina pursuant to a labor certification and visa issued to the NCGA and those workers under 8 U.S.C. §§ 1184(c) and 1101(a)(15) (H)(ii)(a).

2. Plaintiff Class #2: A class of persons under Rule 23(a), N.C. R. Civ. P., for declaratory relief and compensatory damages under the common law of contracts, which

consists of all alien or formerly alien workers who were, are, and/or shall be jointly or severally employed at any location in North Carolina by defendants NCGA, NCGA members Marcus Thigpen, Durwood Cook, and James "Jimmy" Pope, Jr., and/or one or more other members of the NCGA at any time in the time period from December 23, 1999 and continuing thereafter until the date final judgment is entered in this action, and who actually performed and/or shall perform any agricultural labor for defendants Thigpen, Cook, or Pope, or any other such NCGA member within that same time period in the first workweek after that worker arrived or shall arrive in North Carolina pursuant to a labor certification and visa under 8 U.S.C. §§ 1184(c) and 1101(a)(15)(H)(ii)(a), and pursuant to a contract formed with those workers under 20 C.F.R. § 655.103(b) (describing the employer assurances) and 20 C.F.R. § 655.102(b)(9) (setting the pay rate) and item 9 of the NCGA Clearance Orders and job offers made by the named defendants described in ¶ 42 of the Complaint that was or shall be accepted by the named plaintiffs and the plaintiff class defined in this paragraph.

These classes are referred to collectively as the "Plaintiff Classes" and the members of these classes are referred to as the "Plaintiff Class Members." Plaintiffs in these classes also are collectively referred to as the "Garcia-Alvarez Plaintiffs." In the Court's Order filed on January 27, 2005, the Court already determined that the Plaintiff Classes meet the requirements for class certification set forth in Rule 23 of the North Carolina Rules of Civil Procedure and applicable authorities interpreting Rule 23. The Court continues in that determination for the reasons stated in the January 27, 2005 Order.

B. The following classes of defendants that are the subject of the proposed Settlement Agreement between the parties are:

1. Defendant Class #1: Those members of the NCGA (and the person(s) who were the partner(s)/ owner/operator(s) of any corporate or partnership member of the NCGA) other than Durwood Cook, James Pope, Jr., and Marcus Thigpen who at any time in the time period from December 23, 2000 and continuing thereafter until the date final judgment is entered in this action that employed, jointly employed, shall employ, and/or shall jointly employ the named plaintiffs and/or one or more members of Plaintiff Class #1 that the named plaintiffs seek to represent in the first workweek after that worker arrived in North Carolina pursuant to a labor certification and visa issued to the NCGA and those workers under 8 U.S.C. § 1101(a)(15)(H)(ii)(a).

2. Defendant Class #2: Those members of the NCGA (and the person(s) who were the partner(s)/owner/operator(s) of any corporate or partnership

member of the NCGA) other than Durwood Cook, James Pope, Jr., and Marcus Thigpen who at any time from December 23, 1999 in the time period from December 23, 1999 and continuing thereafter until the date final judgment is entered in this action employed, shall employ, jointly employed, and/or shall jointly employ the named plaintiffs, and/or one or more members of Plaintiff Class #2 that the named plaintiffs seek to represent, in the first workweek after that worker arrived in North Carolina pursuant to a labor certification and visa issued to the NCGA under 8 U.S.C. §§ 1184(c) and 1101(a)(15)(H) (ii)(a), and pursuant to a contract formed with those workers by 20 C.F.R. § 655.103(b) (employer assurances) and 20 C.F.R. §§ 655.102(b)(9) and 655.107 (setting the pay rate) and item 9 of the NCGA Clearance Orders and job offers made by the named defendants that was accepted by the named plaintiffs and the class that the named plaintiffs seek to represent.

These classes are referred to collectively as the "Defendant Classes" and the members of these classes are referred to collectively as "Defendant Class Members."

Defendants in these classes also are collectively referred to as the "Garcia-Alvarez Defendants." In the Court's Order filed on January 27, 2005, the Court determined that the Defendant Classes meet the requirements for class certification set forth in Rule 23 of the North Carolina Rules of Civil Procedure and applicable authorities interpreting Rule 23. The Court continues in that determination for the reasons stated in the January 27, 2005 Order.

C. For purposes of this Judgment and Order, the term "de Luna Plaintiffs" collectively shall refer to Felipe de Jesus de Luna-Guerrero, Baldomero Gutierrez-de Luna, and Luis Manuel de Luna-Reyes, and all other similarly situated individuals who properly filed a Consent to Sue form with the U.S. District Court, Eastern District of North Carolina, during the time period set by that court in its September 30, 2004 Order. The term "de Luna Defendants" collectively shall refer to The North Carolina Growers' Association, Inc. ("NCGA") and Marcus Thigpen.

D. The Court is not aware of any appellate authority from the courts of North Carolina as to what standard to apply in conducting a fairness review under Rule 23(c) of the North Carolina Rules of Civil Procedure with respect to the final approval of a class action settlement. Therefore, the Court has been guided by the factors that federal courts have applied under the analogous provisions of Rule 23(c) of the Federal Rules of Civil Procedure. In In re Jiffy Lube Securities Litigation, 927 F.2d 155 (4th Cir. 1991), the U.S. Court of Appeals for the Fourth Circuit stated that in conducting a fairness analysis, a court is required to examine the proposed settlement agreement for “fairness and adequacy” under Rule 23(c) through a consideration of “all . . . factors relevant to a full and fair compromise” with the “primary concern” being “the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations.” Id. at 158.

E. In conducting the “fairness” analysis, the Fourth Circuit has stated that a court should determine “that the settlement was reached as a result of good-faith bargaining at arm’s length, without collusion, on the basis of (1) the posture of the case at the time the settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of . . . [wage and hour] class action litigation.” Id. at 158-59.

F. Applying these factors, the Court has determined that the Settlement Agreement was reached as a result of good-faith bargaining, at arm’s length, without collusion, between counsel for Plaintiff Classes and counsel for Defendant Classes.

The Court further finds that Plaintiffs' counsel Robert J. Willis has experience in wage and hour class action litigation (see, e.g., Haywood v. Barnes, 109 F.R.D. 586 (E.D.N.C. 1986)); that Carol Brooke of the North Carolina Justice Center also has experience in wage and hour class litigation (see Beltran-Benitez v. Sea Safari, Ltd., 180 F. Supp. 2d 772 (E.D.N.C. 2001)); and that Defendants' counsel W.R. Loftis, Jr. has experience in wage and hour class action litigation (see, e.g., U.S. Department of Labor v. The North Carolina Grower's Association, 377 F.3d 345 (4th Cir. 2004)).

Thus, the Court finds that counsel for the Plaintiff Classes and Defendant Classes will adequately and have adequately represented their respective classes.

G. In conducting the "adequacy" analysis, the Fourth Circuit has instructed that courts should consider "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs' are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." Jiffy Lube, 927 F.2d at 159.

H. With regard to the adequacy factors, the Court finds that all aspects of the Settlement Agreement fully settles all aspects of this class action and falls within "the range of reasonableness" and "possible approval." See Horton v. Merrill Lynch, 855 F. Supp. 825, 857 (E.D.N.C. 1994).

Based on the foregoing, and in the exercise of the Court's discretion, it is hereby ORDERED that and final JUDGMENT is hereby entered in the above-captioned case as follow:

1. Case No.: 04-CVS-14949, styled Jose Manuel Garcia-Alvarez, et al. v. The North Carolina Grower's Association, et al., shall continue to be maintained as a class action in the manner and to the degree set forth in the Court's January 27, 2005 Order.

2. Robert J. Willis and the North Carolina Justice Center by Carol Brooke and Jack Holtzman shall continue to serve as class counsel for the two (2) Plaintiff Classes certified by the Court's January 27, 2005 Order.

3. The law firm of Constangy, Brooks & Smith, LLC by W.R. Loftis, Jr. shall continue to serve as class counsel for the two (2) Defendant Classes that were certified in the Court's January 27, Order.

4. Upon final review, the Settlement Agreement and its various provisions are within the range of reasonableness and possible approval, and accordingly are approved pursuant to Rule 23(c) of the North Carolina Rules of Civil Procedure.

5. Judgment is entered in favor of the two (2) plaintiff classes and the named plaintiffs and against the named defendants and the members of the defendant classes who did not opt out of those same defendant classes on or before 2 May 2005 whose names appear on the attached list marked as Exhibit A in the monetary amounts specified for each such member of the two defendant classes in the attached spreadsheet marked as Exhibit B. However, as part of this judgment, the right of the named plaintiffs and any member of the plaintiff classes to use legal process to collect on this judgment shall be suspended until 30 June 2006 to allow the persons or entities whose names appear in Exhibit A and Exhibit B attached to this Judgment and Order to pay the amount specified in Exhibit B attached for which judgment has been entered.

6. In addition to the judgment entered in ¶5 above of this Judgment and Order, on or before 30 June 2006, each person or entity listed in Exhibit A attached is hereby ORDERED to pay the full amount listed for each such person or entity in Exhibit B attached by "GrowerID" number in Exhibits A and B to the "Garcia-Alvarez Trust Account" in an interest-bearing trust account of a bank or other financial institution to be identified by class counsel for the parties within 10 days of the date of this Judgment and Order pursuant to ¶18(c) below of this Judgment and Order for distribution to members of the two plaintiff classes.

7. In the event that any named defendant or any person or entity listed in Exhibit A and Exhibit B attached does not make full payment of the entire amount specified in Exhibit B attached by on or before 30 June 2006, it is hereby ORDERED AND ADJUDGED that judgment shall be entered against any such named defendant or member of the defendant classes for an additional penalty equal to 25% of the amount specified for that person or entity in Exhibit B attached.

8. In the event that any named defendant or any person or entity listed in Exhibit A and Exhibit B attached does not make full payment of the entire amount specified in Exhibit B attached by on or before 30 June 2006, each such person or entity is hereby ORDERED to pay an additional penalty equal to 25% of the amount specified for that person or entity in Exhibit B attached to the "Garcia-Alvarez Trust Account" in an interest-bearing trust account of a bank or other financial institution to be identified by class counsel for the parties within 10 days of the date of this Judgment and Order pursuant to ¶18(c) below of this Judgment and Order for distribution to members of the two plaintiff classes. It is further ORDERED that any person or entity that is ORDERED



to pay this penalty shall be immediately obligated to make full payment of this penalty to the "Garcia-Alvarez Trust Account" in an interest-bearing trust account of a bank or other financial institution to be identified by class counsel for the parties within 10 days of the date of this Judgment and Order pursuant to ¶18(c) below of this Judgment and Order for distribution to members of the two plaintiff classes.

9. After 30 June 2006, it is hereby ORDERED that the named plaintiffs and the members of the plaintiff classes shall have the option(s) of using either (a) the procedures specified in Subchapters 10, 11, 12, and/or 13 of Chapter 1 of the General Statutes, and/or G.S. §§1C-1601 et seq., to execute on any unpaid judgment that is due and payable pursuant to the terms of this Judgment and Order, and/or (b) the procedures and all remedies for civil contempt specified in G.S. §5A-21 et seq. to obtain full payment of any amount(s) that any person or entity listed in Exhibit A or in some other provision of this Judgment and Order has been ordered to pay.

10. Except as otherwise specified in this Judgment and Order, in the event that the named plaintiff(s) and/or any member of the plaintiff classes pursue any civil contempt remedy to collect any sum(s) that is described or referred to in ¶9(b) above after 30 June 2006, it is hereby ORDERED that any member of one or both of the defendant classes listed in Exhibit A attached against whom or which that civil contempt action is brought shall be responsible for payment of reasonable attorneys' fees and costs associated with any such attempt(s) to any attorney who brings any such civil contempt proceeding and interest at the rate specified in G.S. §24-1 for any unpaid sum(s) that are described or referred to in ¶9(b) above.

11. The undersigned retains continuing jurisdiction over this action for purposes of enforcing any civil contempt action of the type described in ¶¶9(b) and 10 above that may be brought by the named plaintiffs or any member of the plaintiff classes to enforce the obligation of any named defendant(s) (other than the NCGA) and/or any member of the defendant classes to fully and timely pay any sum(s) that any such person(s) or entity may be obligated to pay pursuant to the provisions of ¶¶6, 8, and 10 above.

12. As part of the judgment entered in ¶¶5 and 7 above, it is hereby ORDERED that for each season worked in the time period from 2000 to 2004 for any member of the NCGA, the members of the plaintiff classes described in ¶¶17(a)-(b) below of this Judgment and Order (excluding any person who received monetary compensation as a named plaintiff or party plaintiff in the collective action filed in federal court in de Luna-Guerrero v. NCGA, 338 F.Supp.2d 649 (E.D.N.C. 2004), who apply for reimbursement from the fund within the time period specified in ¶17(d) below shall receive, for each season each such plaintiff class member worked between 2000 and 2004, a payment equal to \$1.475 million divided by the total number of seasons worked between 2000 and 2004 by all plaintiff class members who file timely claims for reimbursement within the time period specified in ¶17(d) below. It is further ORDERED that any named plaintiff or party plaintiff in the collective action filed in federal court in de Luna-Guerrero v. NCGA, 338 F.Supp.2d 649 (E.D.N.C. 2004) who received compensation as a result of that litigation shall not receive additional damages pursuant to this paragraph of the Court's Judgment and Order.

13. It is hereby ORDERED that defendant NCGA shall pay the sum of \$150,000 into a fund that shall be subject to the following conditions:

(a) Defendant NCGA shall pay that sum into an investment account, mutual fund, and/or other interest-generating account or instrument(s) that is mutually agreeable to the Defendant NCGA and the Farm Labor Organizing Committee, AFL-CIO (FLOC) within thirty (30) days of the date that the Court grants its final approval to this Settlement Agreement under Rule 23(c), N.C.R.Civ.P.;

(b) Defendant NCGA and FLOC shall designate a mutually agreeable accountant or other bookkeeper to maintain accounting/bookkeeping records relating to the income generated by the investment of any such money and any payment(s) made from any money in that fund.

(c) Upon mutual agreement of defendant NCGA and FLOC, that accountant, bookkeeper or such other person(s) or entity as defendant NCGA and FLOC may open, maintain, and/or close any checking and/or savings account(s) as may be useful for the allocation and/or distribution of any part or all of the principal, investment income, and/or interest that may be obtained and/or generated as a result of the payment and/or investment that is described in ¶13(a) above with the proviso that the identity of the financial institution in which any such checking and/or savings account must also be mutually agreeable to FLOC and Defendant NCGA;

(d) The fund created by ¶13(a) above shall be used solely for the use and benefit of one or more members of one or both of the plaintiff classes.

Potential uses of the monies in the fund could include, but are not limited to, return transportation expenses for members of the plaintiff class who need to return to Mexico before the end of their contract because of a family emergency, etc.

(e) Upon the joint direction (written, facsimile, and/or e-mail) of both defendant NCGA and FLOC to the accountant, bookkeeper or such other person(s) or entity described in ¶13(b) above of this Judgment and Order that the assistance or relief to one or more worker(s) that are covered the terms of ¶13(d) above of this Judgment and Order meets the limitations contained in ¶13(d), the accountant, bookkeeper or such other person(s) or entity as defendant NCGA and FLOC may mutually designate in writing (written or electronically) shall write draft(s) or negotiable instrument(s) in any amount(s) to any payee(s) that may be mutually specified by both defendant NCGA and FLOC with respect to any money maintained in that fund or in any checking and/or saving account(s) that may be maintained by that accountant or bookkeeper pursuant to ¶13(c) above with regard to any money in that account(s), fund or any income generated through the investment of the funds initially provided pursuant to this provision of the Settlement Agreement;

(f) On 24 hours notice (either written or electronically), any accountant or bookkeeper described in ¶13(b) above of this Judgment and Order must allow a designated representative(s) of Defendant NCGA or FLOC to enter, inspect, and copy any records, file(s), document(s), or paper(s) that any such accountant or bookkeeper has received in connection with that accountant's or

bookkeeper's management of the funds that are described in ¶13 of this Judgment and Order.

14. It is hereby ORDERED that any person or entity listed in Exhibit A attached who is not subject to the collective bargaining agreement between the Farm Labor Organizing Committee ("FLOC") and NCGA, signed September 16, 2004, in 2006 and/or 2007, and who also employs H2A workers in 2006 and/or 2007 shall:

(a) Members of the defendant classes who are not subject to the collective bargaining agreement ("CBA") between the NCGA and the Farm Labor Organizing Committee ("FLOC"), and who employ H2A workers in 2006 and/or 2007 shall be free to contract or employ any person(s) or entity to obtain, recruit, or otherwise assist any such member of one or both of the defendant classes to recruit, hire, provide services to, or otherwise employ any worker under the H2A program. However, in the event that any such member of one or both of the defendant classes does employ any H2A worker(s) in 2006 and/or 2007 they shall be subject to a consent order which provides that:

(i) Visa and visa interview expenses required to obtain an H2A visa for any worker to be employed by any such Defendant grower incurred by H2A workers shall be paid by such grower Defendants and shall not at any time be charged to a grower's H2A workers.

(ii) For 2006, each H2A worker who is jointly and/or individually employed by such Defendants and/or some other grower association other than the NCGA may be required to pay up to an \$80 "H2A fee" via payroll deduction by that other grower association or by

such Defendant grower who directly employs that worker in North Carolina, so long as the amount deducted in any such workweek does not reduce the worker's net pay below \$5.15 per hour or the applicable minimum wage under the Fair Labor Standards Act and/or North Carolina Wage and Hour Act, whichever is higher. The deduction shall be specified on the worker's paycheck as "H2A fee." Any Defendant grower who elects to make any such wage deduction shall obtain the wage deduction authorization required under the North Carolina Wage and Hour Act with regard to any wage deduction of the type described herein.

(iii) Other than the \$80 "H2A fee" described in ¶8(a)(iii) above, for 2006, each such grower Defendant shall not charge or collect, directly or indirectly, any money or anything of value from any H2A worker(s) who is designated or accepted for sole or joint employment by any such grower Defendant(s). For 2006, no such grower Defendant shall knowingly contract with any agent(s) or representative(s) including, but not limited to, any entity or person(s) that any such grower Defendant or any agent(s) or representative(s) of any such grower Defendant knowingly hires, uses, or employs to recruit or provide any services or information who charges or collects, directly or indirectly, any money or anything of value from any such worker other than the actual cost of any border crossing fee charged by the U.S. government and the actual cost of any bus fare from the place of recruitment to the U.S. Consulate in Mexico or

to any such worker's first place of employment in the United States of America;

(iv) For 2007, each such grower Defendant shall not charge or collect, directly or indirectly, any money or anything of value from any H2A worker(s) who is designated or accepted for sole or joint employment by any such grower Defendant(s). For 2007, no such grower Defendant knowingly shall contract with any agent(s) or representative(s) including, but not limited to, any entity or person(s) that any such grower Defendant or any agent(s) or representative(s) of any such grower Defendant knowingly hires, uses, or employs to recruit or provide any services or information who charges or collects, directly or indirectly, any money or anything of value from any such workers other than the actual cost of any border crossing fee charged by the U.S. government and the actual cost of any bus fare from the place of recruitment to the U.S. Consulate in Mexico or to any such worker's first place of employment in the United States of America ;

(v) Such Defendants shall reimburse H2A workers for the cost of the border crossing expenses that each H2A worker must pay to enter the USA and the actual cost of transportation to North Carolina from the place of recruitment on or before the first payday for the first workweek the worker is in North Carolina.

15. It is ORDERED that the provisions of ¶14(a)(i)-(v) above of this Judgment and Order shall not apply to any person or entity specified in the introductory

language to ¶14 of this Judgment and Order if the holding under 29 U.S.C. § 206 in de Luna-Guerrero v. The North Carolina Grower's Association, Inc., 338 F.Supp.2d 649 (E.D.N.C. 2004), is overruled by a final decision of a North Carolina appellate court, a final decision of the Fourth Circuit, an amendment to the Fair Labor Standards Act, or a final rule promulgated under the Administrative Procedures Act that has not been enjoined, ruling that an H2A employee's payment of such expenses does not constitute a violation of the Fair Labor Standards Act. If this provision of the Court's Judgment and Order is triggered after the visa, border crossing, and travel expenses have been paid or reimbursed for 2007, no repayment by any H2A worker who receives any such payment or reimbursement shall take place.

16. It is hereby ORDERED that Defendant NCGA shall pay the cost of printing and mailing or otherwise distributing two notices to the Garcia-Alvarez Plaintiff classes (one to provide a notice of final settlement and the other to explain the process for claiming damages) and a single notice to the Garcia-Alvarez Defendant classes, and one notice to the de Luna Plaintiffs.

17. It is hereby ORDERED that on or before July 31, 2006, defendant NCGA shall mail a notice to claim damages to each member of one or both of the plaintiff classes in this action at the last known address of each such person to specify the following claims procedure for payment of the compensation described in ¶12 above of this Judgment and Order:

(a) Defendant NCGA shall only mail that notice to those members of one or both of the plaintiff classes who were not employed by the NCGA between January 1 and July 31, 2006.



(b) Only those members of one or more of the plaintiff classes who were not employed by the NCGA between January 1 and July 31, 2006 shall be eligible to apply for compensation in the amount specified in ¶12 above of this Judgment and Order.

(c) Any member of the plaintiff classes who receives this notice must complete and return a form to the designated entity listed in that form to request that they be paid compensation at the rate specified in ¶12 above of this Judgment and Order.

(d) Any eligible member of one or both of the plaintiff classes shall be given 180 days to apply for payment of damages, from the date the notice was initially mailed to those plaintiff class members.

(e) With the exception of the named plaintiffs and the party plaintiffs in the collective action in de Luna-Guerrero v. NCGA, 338 F.Supp.2d 649 (E.D.N.C. 2004), if any member of one or both of the plaintiff classes accepts payment as part of the class remedy, then he/she shall not be eligible for employment in 2006 with the NCGA.

18. It is hereby ORDERED that the base liability of the person or entity listed on Exhibit A attached shall be equal to the total number of different H2A workers employed by each such member of the defendant classes during the 2000-05 seasons divided by the total number of different H2A workers employed by all NCGA members during the 2000-05 seasons, multiplied by \$1.475 million with the following exceptions:

(a) If an H2A worker was employed by more than one grower Defendant during a particular season, the method of calculating base liability as described in ¶18 above shall be adjusted as follows:

(i) If an H2A worker, other than a short term or temporary worker, was employed by more than one grower, the employer shall share equally in the base liability.

(ii) If an H2A worker is a short term or temporary worker, the employing grower or growers of the short term or temporary worker will be responsible for twenty-five percent (25%) of the base liability and the remaining grower or growers will be responsible for seventy-five percent (75%) of the base liability.

(iii) A short term or temporary worker is defined as a worker who is so designated by the NCGA consistent with past billing practices for the provision of H2A workers.

(b) This formula shall be employed to determine the amount of any financial obligations imposed by this Judgment and Order against all members of the defendant classes listed in Exhibit A attached under this Settlement Agreement, including those damages referred to in ¶6 and 20 of this Order.

(c) Within 10 days of the filing of this Judgment and Order, class counsel for the plaintiff and defendant classes shall notify the Wake County Clerk of Superior Court, the undersigned, and all counsel of record as to the identify of the bank or other financial institution to be specified as the financial institution responsible for the operation and maintenance of the "Garcia-Alvarez" interest-

bearing trust account that is referred to in other paragraphs of this Judgment and Order. This interest-bearing trust account shall be jointly controlled by the named plaintiffs and the named defendants, by and through their counsel of record.

19. It is hereby ORDERED that the NCGA shall pay for the cost of distributing the damages to those members of one or both of the plaintiff classes who apply for, and are eligible for, damages under the terms of this Judgment and Order. In order to distribute the funds that have been collected through the payments required by ¶¶5-8 above of this Judgment and Order, the NCGA is further ORDERED to establish a trust account (*Fideicomiso*) with a major Mexican bank ("Bank") that is mutually agreeable to counsel for the named plaintiffs and named defendants subject to the following terms and conditions:

(a) This Bank shall provide sufficient local branches that a branch will be available to most members of one or both of the plaintiff classes within a reasonable travel distance of their home.

(b) Each member of one or both of the plaintiff classes who is entitled to receive compensation based upon the terms of ¶¶12 and 17 above of this Judgment and Order shall be entitled to receive those damages by going to a local branch of the Bank, presenting an official identification such as Mexican Identification Card, passport and/or Mexican Military Service Identification Form, as required by applicable Mexican Banking Regulations, and receiving the full amount of damages or compensation corresponding to such class member, with no deductions for fees, service charges, etc.

(c) Any bank fees shall be paid out of the accumulated interest, but any Bank fees in excess of the amount of interest shall be paid by Defendants with such expenses to be allocated among the persons listed in Exhibit A attached pursuant to the *pro rata* method specified in ¶¶18(a)-(b) above of this Judgment and Order.

(d) Upon expiration of the claims period specified in ¶17(d) and the re-allocation of the settlement fund described in ¶6 above in the manner specified in ¶¶6 and 21 of this Judgment and Order, claims shall then be paid by the Bank as the qualifying plaintiff class members submit their claims pursuant to the procedure described in ¶19(b) above of the Judgment and Order in the amounts calculated pursuant to ¶¶6 and 21 of this Judgment and Order. After all claims have been paid pursuant to this procedure, the Bank shall distribute any remaining funds in the manner required by ¶22 of this Judgment and Order.

(e) Defendants shall obtain from the Bank and provide a monthly accounting from the Bank to plaintiffs' counsel for this trust account within 15 days from the date that each such accounting is provided to the NCGA and/or its representative(s).

(f) In the event no reasonable and satisfactory method of distribution can be agreed upon in a timely manner by the parties via the Bank, the NCGA and the persons listed in Exhibit A attached shall still pay the cost of distribution to Garcia-Alvarez Plaintiff class members at no cost to those workers.

20. It is hereby ORDERED that Defendant NCGA shall pay Plaintiffs' attorneys for the number of hours and the rates set forth in Plaintiffs' fee petitions in de

Luna-Guerrero v. NCGA, 338 F.Supp.2d 649 (E.D.N.C. 2004), filed June 9, 2005, but shall not pay the requested enhancement. Defendant NCGA shall also pay for the costs and expenses set forth in that petition. It is further ORDERED that:

(a) Defendant NCGA shall pay for all attorney time accumulated by plaintiffs' counsel in de Luna-Guerrero v. NCGA up to July 29, 2005 within 30 days of the date on which the U.S. District Court for the Eastern District of North Carolina's preliminary approval of the settlement in de Luna-Guerrero v. NCGA, 338 F.Supp.2d 649 (E.D.N.C. 2004).

(b) Counsel for the plaintiff classes in this action shall submit Garcia-Alvarez time records up to July 29, 2005 to counsel for the Garcia-Alvarez Defendants, and Defendant NCGA shall pay at the rates set forth in the de Luna-Guerrero fee petitions, within 30 days of the Court's final approval of the settlement in Garcia-Alvarez.

(c) Within 30 days of final approval of the Garcia-Alvarez settlement by the court, Defendant NCGA shall also pay for all time accumulated from July 29, 2005 through the date of that final approval at the rates set forth in the de Luna-Guerrero fee petition.

(d) Time and expenses claimed by counsel for the plaintiffs in de Luna-Guerrero v. NCGA and/or in this action which were not submitted to Defendant NCGA by June 9, 2005 shall be paid as follows:

(i) Plaintiffs shall submit itemized time records on a bimonthly basis to Defendant NCGA and, with the exception of any time entry or entries that Defendant NCGA considers to be unreasonable, the Defendant

NCGA shall pay within 30 days of receipt for all time recorded on those itemized time records at the same rates in the de Luna-Guerrero fee petition.

(ii) In the event that that the Defendant NCGA considers a particular time entry or entries in an itemized time record to be unreasonable, NCGA shall pay for all time entries that they do not contest, and include with that payment some written statement of what time entry or time entries NCGA considers to be unreasonable and why with that payment within the time period specified in ¶20(d)(i) above;

(iii) Upon Plaintiffs' receipt of a fee payment for less than the full time billed and the written statement described in ¶20(d)(ii) above, Plaintiffs' class counsel shall be required to confer with Defendants' class counsel in good faith in an effort to resolve the dispute. If Plaintiffs' class counsel is not provided with the written statement described in ¶20(d)(ii) above, the failure of Defendant NCGA to provide that written statement within that 30-day time period shall constitute a waiver of their right to contest a time entry as unreasonable for whatever reason;

(iv) Upon receipt of the written statement described in ¶20(d)(ii) above, Plaintiffs' counsel shall be required to consult with Defendants' counsel in good faith in the 30-day following receipt of that same written statement. If those good faith efforts at consultation are not successful, Plaintiffs' counsel may move the court for an order requiring

the Defendants to pay the contested fees. The undersigned retains jurisdiction over this action to decide any such motion.

(v) In the event that the Court determines that NCGA's refusal to pay the contested fees was without a good faith basis in law or fact, Defendant NCGA shall be responsible for paying for the attorney time expended by Plaintiffs' counsel in the preparation, filing, and/or argument of any motion to the Court to obtain an order requiring the Defendant NCGA to pay those contested fees.

21. Excluding any remaining interest and penalties that may be collected by plaintiffs' counsel pursuant to any of the provisions of this Judgment and Order or paid by the Bank pursuant to ¶18(c) above of this Judgment and Order, it is hereby ORDERED that all unclaimed money damages remaining in the Bank trust account fund referred to in ¶5-8 and 18(c) above of this Judgment and Order after the 180 day application period described in ¶¶12 and 17(d) above of this Judgment and Order has expired shall be reallocated among the members of the plaintiff classes using the reallocation method described in ¶6 above of this Order.

22. Upon the conclusion of the 180-day application period specified in ¶17(d) above of this Judgment and Order and after all compensation has been paid to the eligible members of the plaintiff classes pursuant to the provisions of ¶¶12 and 17(a)-(b) above of this Judgment and Order, it is hereby ORDERED that any remaining interest and penalties in the trust account operated by the Bank pursuant to ¶19 above of this Judgment and Order shall be divided equally among two §501(c)(3) tax-exempt, not-for-

profit organizations, the Campaign for Migrant Worker Justice, Inc. and the North Carolina Chapter of National Farmworker Ministry.

23. The undersigned retains continuing jurisdiction over this action for purposes of any motion, action or proceeding that may be brought by the named plaintiffs, any member of one or both of the plaintiff classes, and named defendant(s), and/or any member of one or both of the defendant classes to enforce the obligation(s) of any named plaintiff(s), any member of one or both of the plaintiff classes, any named defendant(s), and/or any member(s) of one or both of the defendant classes to fully and timely comply any provision(s) or requirement(s) of ¶¶14, and 16-22, inclusive, of this Judgment and Order.

24. The parties in de Luna-Guerrero v. NCGA who are also named plaintiffs or named defendants and/or plaintiff and defendant class members in this action shall file a Stipulation of Dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure, dismissing all claims against named defendants in de Luna v. NCGA. The named plaintiffs and named defendants in this action shall file a Stipulation of Dismissal pursuant to Rule 41 of the North Carolina Rules of Civil Procedure, dismissing all claims against the named defendants and all persons and entities listed in Exhibit A attached after the time period provided for by ¶¶12 and 17(d) of this Judgment and Order for the named plaintiffs and the members of one or both of the plaintiff classes has expired, and the time for Defendants to dispute any payment of attorney's fees pursuant to ¶20 has expired.

25. It is ORDERED and ADJUDGED that the terms of this Judgment and Order shall be binding and inure to the benefit of the named plaintiffs, all members of the

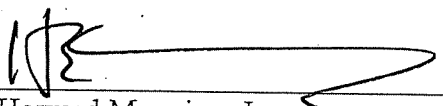


plaintiff classes who have not opted out of this litigation, all named defendants, all persons listed in Exhibit A attached, and their respective, heirs, representatives, successors and assigns.

26. For the reasons set forth above in this Judgment and Order, the objections of the *pro se* Plaintiff Class Members and the Original and any amended Objections of defendant class members Johnny Myatt, Timothy McLamb, and Randy Rosser, to the Court's final approval of the terms of the proposed Settlement Agreement should be and are OVERRULED.

27. Pursuant to G.S. §1-289, in the event that any member(s) of the plaintiff or defendant classes desires to stay the provisions of ¶¶5-8 and 14(a)(i)-(v) of this Judgment and Order that the moving parties have attached to their Joint Motion pending their appeal of this Judgment and Order, that member of the plaintiff and/or defendant classes shall be and is required to post a secured or cash bond pursuant to the procedure set forth in G.S. §1-289 for all of the \$1.475 million payment required by ¶¶5-8 of the proposed Judgment and Order, and an additional \$400 for each H2A worker that any former member(s) of the NCGA who has been directed by ¶¶14(a)(i)-(v) of the proposed Judgment and Order to pay the visa fees, transportation costs, and recruiting fees described in ¶¶14(a)(i)-(v) of this Judgment and Order. See G.S. §1-289.

This the 10<sup>th</sup> day of MARCH, 2006.

  
Howard Manning, Jr.  
Superior Court Judge Presiding